



IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

In re The Application of
JIMMY LEE EDWARDS
Serial No.: 08/889,398
Filing Date: 07/08/97

Art Unit: 2833
Examiner: KIM, Y.

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner of Patents & Trademarks
Washington, D.C. 20231

Sir:

In response to the Office Action dated June 25, 1998,
applicant responds to the restriction requirement imposed with
traverse and conditional election as follows

I. TRAVERSE

A. Introductory Statement

The basis for the restriction requirement imposed by the
Examiner is set forth in section "B" below with traverse,
discussion thereof, and request for reconsideration set forth in
section "C" below. A conditional election of one of the "species"
designated by the examiner is made in section "D" below. Re-
examination and reconsideration of the restriction requirement is
requested.

B. Discussion of Basis for Restriction Requirement

The Examiner has imposed a restriction requirement, stating:

1. This application contains claims directed
to the following patentably distinct species of the
claimed invention Species I, Figs.3,4 and species II,
Figs.5,6.

Applicant is required under 35 U.S.C. 121 to
elect a single disclosed species for prosecution on the
merits to which all claims shall be restricted if no
generic claim is finally held to be allowable.
Currently, no claim is generic. [emphasis added]

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claims is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP §809.02(a).

Should applicant traverse on the ground that the species are patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the invention.

Applicant is advised that a reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

C. Applicant's Traverse of Restriction Requirement

The applicant must respectfully traverse the restriction requirement and the basis set forth by the examiner for same. The examiner states that "[c]urrently no claim is generic" as to the species where election has been required. This is incorrect. The element that varies between FIGS. 3, 4, 5, and 6 is the nature of the "expanded head" portion of the invention. In FIGS. 3 and 4, this portion is "generally cylindrical." In FIGS. 5 and 6, this portion is "flat." The applicant would submit that the foregoing distinction is not such as to require restriction. Generic claims are listed below.

1. Generic Claims Claim 1, which does not contain limitations relevant to the distinctions between FIGS. 3 and 4 on one hand, and FIGS. 5 and 6 on the other, is generic. Claim 2, which introduces the "expanded head" limitation illustrated in all of the aforesaid figures, is generic as to all of the embodiments set forth in FIGS. 3, 4, 5 and 6 (i.e.-as to both "species I" and "species II"), and serves as the claim upon which claims 3, 4, 5, 6, 7, and 8, (i.e.-both "species I" and "species II" claims) ultimately depend. Likewise, "expanded head portion" claim 9 is generic and serves as the claim upon which claims 10, 11, and 12 (i.e.-both "species I" and "species II" claims) ultimately depend. Claims 13, 14, and 15 are likewise generic, including only the "expanded head" terminology used in claims 2 and 9, without adding additional language specifying whether this "expanded head" is "cylindrically shaped" ("species I") or is "flat" ("species II").

2. "Species I" Claims FIGS. 3 and 4, in which the "expanded head" is "generally cylindrical," which the examiner has designated as "species I," are specifically described in claims 3, 5, 7, 8, 10, 12, 16, 17, and 18.

3. "Species II" Claims FIGS. 5 and 6, in which the "expanded head" is "flat," which the examiner has designated as "species II" are specifically described only in claims 4 and 11.

D. Conditional Election of "Species" for Examination

The applicant hereby conditionally elects the generic claims and "species II" claims depending thereon-i.e.-claims 1, 2, 4, 6,

9, 11, 13, 14, and 15 for examination if the examiner does not reconsider and withdraw the restriction requirement imposed.

CONCLUSION

In view of the foregoing remarks, it is submitted that the restriction requirement imposed, in response to which a conditional election has been made above, should be withdrawn. Reconsideration of the restriction requirement is hereby requested.

Respectfully submitted,



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